

ARKANSAS SUPREME COURT

No. 09-340

TIMOTHY RAMON MOORE
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered May 21, 2009

PRO SE MOTION FOR LEAVE TO
FILE PETITION FOR WRIT OF
HABEAS CORPUS IN SUPREME
COURT [CIRCUIT COURT OF
LINCOLN COUNTY, LCV 2005-81,
HON. ROBERT H. WYATT, JR.,
JUDGE]

MOTION TREATED AS MOTION FOR
RULE ON CLERK AND DENIED.

PER CURIAM

In 2002, petitioner Timothy Ramon Moore was found guilty by a jury of aggravated robbery, kidnapping and theft of property. He was sentenced as a habitual offender to an aggregate term of 504 months' imprisonment. On appeal, the Arkansas Court of Appeals reduced the sentence for aggravated robbery, thus modifying the aggregate sentence to 420 months' imprisonment. *Moore v. State*, CACR 03-488 (Ark. App. Jan. 28, 2004).

In 2005, petitioner filed a pro se petition for writ of habeas corpus in the circuit court of the county in which he was incarcerated. The trial court denied the petition, and petitioner timely filed a notice of appeal from the order. No further action was taken to perfect the appeal. On April 2, 2009, petitioner filed in this court the instant pro se motion requesting leave to file a petition for writ of habeas corpus to be considered by this court.

It is clear that the remedy sought in petitioner's motion is in the nature of an appeal from the trial court's order. In the interest of judicial economy, and because petitioner timely filed a notice

of appeal from the circuit court's order, we treat the motion as a motion for rule on clerk pursuant to Arkansas Supreme Court Rule 2-2(b). *Mitchem v. State*, 374 Ark. 157, ___ S.W.3d ___ (2008) (per curiam).

All litigants, including those who proceed pro se, must bear responsibility for conforming to the rules of procedure or demonstrating good cause for not doing so. *Gibson v. State*, 298 Ark. 43, 764 S.W.2d 617 (1989). If a petitioner fails to tender the record in an appeal in a timely fashion, the burden is on the petitioner to make a showing of good cause for the failure to comply with proper procedure. *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam). The fact that a petitioner is proceeding pro se does not in itself constitute good cause for the failure to conform to the prevailing rules of procedure. *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (per curiam).

The time in which a record on appeal must be lodged in the appellate court is governed by Arkansas Rule of Appellate Procedure—Civil 5. Pursuant to Civil Appellate Procedure Rule 5(a), the appeal record must be filed within ninety days from the date the notice of appeal was filed in the trial court. Here, more than ninety days have elapsed since the notice of appeal was filed.

In the motion, petitioner contends that through no fault of his own, he was prevented from proceeding with the appeal. He claims that the circuit court clerk and the Arkansas Department of Correction (“ADC”) were charged with certain duties to ensure that the appeal was perfected. He places the blame for failure to perfect the appeal exclusively on alleged breaches of these duties by the clerk and ADC.

Nevertheless, it was the sole responsibility of petitioner to perfect the appeal, and the blame for failing to do so cannot be placed on others. *Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155

(1990) (per curiam). In this matter, petitioner has shown no good cause for his failure to comply with proper procedure. *Garner v. State, supra*.

Motion treated as motion for rule on clerk and denied.